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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

12 THE FEDERAL HOUSING FINANCE
13 AGENCY, in its capacity as Conservator of
14 Federal National Mortgage Association; and
15 FEDERAL NATIONAL MORTGAGE
16 ASSOCIATION,

15 Plaintiffs,

16 vs.

17 NEVADA NEW BUILDS, LLC, a Nevada
18 Domestic Limited Liability Company

19 Defendant.

CASE NO. 2:16-cv-01188-GMN-CWH

STIPULATION TO STAY DISCOVERY

INTRODUCTION

Plaintiffs Federal National Mortgage Association (“Fannie Mae”) and Federal Housing Finance Agency (“FHFA” or the “Conservator”), in its capacity as Conservator of Fannie Mae, and Defendant Nevada New Builds, LLC hereby stipulate to stay discovery. Good cause exists for the Court to stay all discovery in this matter pending resolution of Plaintiffs’ Motion for Summary Judgment (Dkt. No. 9).

Background

On May 26, 2016, Plaintiffs filed a Complaint, seeking, *inter alia*, a declaratory judgment that federal law prevents a homeowners’ association’s foreclosure sale from extinguishing an Enterprise¹ Lien while the Enterprise is in FHFA conservatorship. (Dkt. No. 1). Plaintiffs filed their Motion for Summary Judgment on August 3, 2016. (Dkt. No. 9). Defendant filed an Opposition to Plaintiffs’ Motion for Summary Judgment on August 26, 2016, (Dkt. No. 10), and Plaintiffs filed a reply in support of their Motion for Summary Judgment. (Dkt. No. 11). To date, no party has served discovery requests on the other.

Plaintiffs’ Motion for Summary Judgment raises the central legal question in this case—whether a homeowner’s association foreclosure sale conducted under Nev. Rev. Stat. § 116.3116(2) (“HOA Sale”) may extinguish Fannie Mae or Freddie Mac’s property interest. Plaintiffs argue that 12 U.S.C. § 4617(j)(3) (the “Federal Foreclosure Bar”) precludes an HOA Sale from extinguishing Fannie Mae or Freddie Mac’s property interests and preempts any contrary state law. No discovery is necessary to resolve this legal question, and the Court’s decision on the pending Motion for Summary Judgment could dispose of Plaintiffs’ claims. Because discovery may never be required in this action, it would be burdensome, inefficient, and inequitable to conduct it at this stage.

Legal Standard Governing Motions to Stay Discovery

District courts have “wide discretion in controlling discovery.” *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988); *see also Yung Lo v. Golden Gaming*, No. 2:12-CV-01885-JAD-

¹ For purposes of this motion, “Enterprise” refers to either Fannie Mae or Freddie Mac.

CWH, 2014 WL 794205, at *1 (D. Nev. Feb. 26, 2014) (“Courts have broad discretionary power to control discovery.”). “In evaluating the propriety of an order staying or limiting discovery while a dispositive motion is pending” courts “consider[] the goal of Federal Rule of Civil Procedure 1, which provides that the Rules shall ‘be construed and administered to secure the just, speedy, and inexpensive determination of every action.’” *Yung Lo*, 2014 WL 794205, at *3 (quoting Fed. R. Civ. P. 1). Courts accordingly ask “whether it is more just to speed the parties along in discovery while a dispositive motion is pending or to delay discovery to accomplish the inexpensive determination of the case.” *Id.*

Courts thus may limit discovery “upon a showing of good cause or where ‘justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Aguirre v. S. Nevada Health Dist.*, No. 2:13-CV-01409-LDG-CWH, 2013 WL 6865710, at *2 (D. Nev. Dec. 30, 2013) (quoting *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 829 (9th Cir. 2003)). A stay of discovery also may be appropriate to “further the goals of judicial economy and control of the Court’s docket,” *id.*, or to “reduce costs and increase efficiency,” *Johnson v. Cheryl*, No. 2:11-CV-00291-JCM-CWH, 2013 WL 129383, at *4 (D. Nev. 2013). When a pending motion raises a threshold legal issue that “do[es] not require further discovery and [is] potentially dispositive of the entire case,” this Court has not hesitated to approve a stay of discovery. *Yung Lo*, 2014 WL 794205, at *3; *Aguirre*, 2013 WL 6865710, at *2; *Thrash v. Towbin Motor Cars*, No. 2:13-CV-01216-MMD-CWH, 2013 WL 5969829, at *2 (D. Nev. Nov. 7, 2013); *Kidneigh v. Tournament One Corp.*, No. 2:12-CV-02209-APG-CWH, 2013 WL 1855764, at *2 (D. Nev. May 1, 2013).

A Stay Is Appropriate Because the Motion for Summary Judgment May Resolve the Parties’ Claims and Can Be Resolved Without Discovery

Under the governing standard, a stay of discovery is appropriate here.

First, if granted, Plaintiffs’ Motion for Summary Judgment will dispose of their claims. Plaintiffs’ claims allege that the Federal Foreclosure Bar preempts the Statute Foreclosure Statute. Thus, if the Court granted Plaintiffs’ Motion, it would hold that HOA foreclosure sales do not extinguish the Fannie Mae’s property interests and Defendant’s interests in the Properties are

1 subject to the Fannie Mae's Liens.

2 Second, resolving whether federal law prevents an HOA foreclosure sale from
3 extinguishing Fannie Mae's property interest while under FHFA's conservatorship does not
4 require discovery or resolution of disputed material facts. This issue presents a pure question of
5 law and only requires the Court to interpret the Federal Foreclosure Bar and determine its
6 preemptive effect on Nevada law. *Cf. Aguirre*, 2013 WL 6865710, at *2; *Thrash*, 2013 WL
7 5969829, at *2; *Kidneigh*, 2013 WL 1855764, at *2. For that reason, this Court and other courts in
8 this District have repeatedly stayed discovery pending resolution of FHFA, Freddie Mac, and/or
9 Fannie Mae's similar motions for summary judgment. *See, e.g., Order, My Home Now LLC v.*
10 *Bank of America, NA*, No. 2:14-cv-01957-RFB-CWH (Oct. 19, 2015) (finding "good cause exists
11 to stay discovery pending resolution of the parties' cross-motions for summary judgment"); *see*
12 *also Order, 1597 Ashfield*, No. 2:14-cv-2123-JCM-CWH (Apr. 16, 2015) (Dkt. 54) ("As in several
13 other cases involving similar issues, there is good cause to stay discovery pending resolution of the
14 motion for summary judgment.").

15 Because Plaintiffs' claims can be resolved as a matter of law on the present evidentiary
16 record without need for discovery, it would be "more just ... to delay discovery to accomplish the
17 inexpensive determination of the case." *Yung Lo*, 2014 WL 794205, at *3. A stay is appropriate
18 "to secure the just, speedy, and inexpensive determination of [this] action." Fed. R. Civ. P. 1.

19 For the foregoing reasons, the parties respectfully request that the Court stay all discovery
20 pending resolution of Plaintiffs' Motion for Summary Judgment.
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DATED this 22 day of November, 2016.

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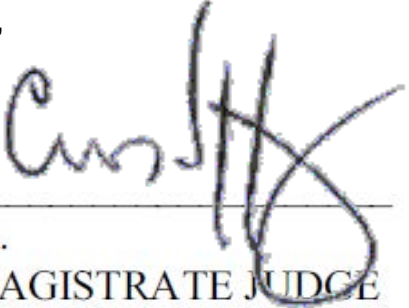
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IT IS SO ORDERED.

DATED: November 29,
2016



C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the [] day of November, 2016, a true and correct copy of **STIPULATION TO STAY DISCOVERY** was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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